

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 26**

**INDUSTRIA LECHERA DE PUERTO RICO, INC.
(INDULAC)**

Employer

and

**Case No. 26-UC-188
(formerly 24-UC-189)¹**

**SEAFARERS INTERNATIONAL
UNION DE PUERTO RICO, CARIBE Y
LATINOAMERICA**

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, the undersigned finds:²

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it

¹ The Acting General Counsel issued an Order Transferring Case from Region 24 to Region 26. Pursuant to said Order, to the extent that further proceedings are appropriate to effectuate this Decision, this case will automatically transfer back to Region 24 and will continue as Case 24-UC-189 except that Region 26 will retain jurisdiction only with respect to issues relating to the substance of this Decision.

² The Employer filed a brief and the Petitioner gave a closing argument, which have been duly considered.

will effectuate the purposes of the Act to assert jurisdiction herein.³

3. I find the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. The Petitioner proposes to clarify the existing bargaining unit by adding the “maintenance and production employees working at the water treatment plant” to the existing unit of production and maintenance employees. The Petitioner asserts the water treatment plant operators (WTP operators) are maintenance employees; thus, they must be included in the bargaining unit. The Employer opposes such a clarification asserting the water treatment employees are not maintenance employees and do not have a community of interest with the existing unit employees.

The Employer and the Petitioner have a longstanding collective bargaining relationship at the facility. The Petitioner was certified on September 12, 1961 to represent: “All production and maintenance employees employed by the Employer at its plant in Hato Rey, Puerto Rico, including chauffeurs and chauffeur helpers”. The parties have a current collective bargaining agreement (CBA), which is effective from May 19, 1998 to May 19, 2003. There are about 98 employees in the current bargaining unit.

The Employer's facility opened in 1957 when the Commonwealth of Puerto Rico passed a law establishing it in order to receive excess milk from other dairy manufacturers in Puerto Rico. Originally, the Employer only made cheese but in the

³ The parties stipulated that Industria Lechera de Puerto Rico, Inc. (INDULAC), hereinafter referred to as the Employer, is a Puerto Rico corporation with an office and place of business in Hato Rey, Puerto Rico, where it is engaged in the business of processing and selling milk, butter and cheese. Within the past 12 months, a representative period, the Employer purchased and received goods valued in excess of \$50,000 directly from locations outside the Commonwealth of Puerto Rico.

1960s it added powdered milk and butter. In 1985, the Employer added UHT milk and in 1999 and 2000, it added more cheese products and evaporated milk.

The Employer's supervisory hierarchy is as follows:

Juan Alvelo	President
Pedro Trinidad, Ph.D.	Director of Operations
Nancy Santiago	Human Resources Manager

The first step in the processing at the Employer's facility is to receive the milk from the dairy farmers and store it in silos. Thereafter, the milk is pumped into secondary storage tanks. For the production of cheese, the milk is pumped from the secondary storage tanks to the pasteurizer to the cooking vats. After the cheese is cooked, it is placed in molds and then refrigerated for aging. After the aging process, the cheese is cut, packed, checked for quality and sent to the market. Similar processes are followed for butter, evaporated milk and milk. According to Dr. Trinidad, the processes are very standardized as to the steps followed, the temperatures for cooking and the cooking times. The operators of this machinery do not have discretion in these matters but rather follow set parameters.

The water treatment plant was built at the Employer's facility in 1997. It is located on the same property as the production plant although there is about 200 feet between the two plants. Before 1997, the Employer discharged its liquid waste into the public sanitary system.⁴ Initially, the Employer contracted with Environmental Operations to operate the water treatment plant. In 1999, the Employer became

⁴ The Employer constructed its water treatment plant as a result of the Clean Water Act. Thereafter, in 1990, the Department of Water and Sewage of Puerto Rico required all generators of "dirty water" to establish adequate methods to clean their waters before discharge.

dissatisfied with the manner, in which the contractor was operating the water treatment plant, so it terminated the contract and hired its own workforce. As previously stated the last CBA was negotiated in 1998.

The water treatment plant receives liquid waste, which is pumped from production into a receptive tank in the water treatment plant. At this point, WTP operators take a sample of the liquid waste to their lab, where they perform chemical and biological testing. The testing determines what kind of treatment must be performed on the waste. Next, the liquid waste is sent to the “dissolving air floatation” unit, where a process separates all of the fats from the liquids. Thereafter, the fat is pressed, placed into a dumpster and taken to a landfill. The remaining liquid, which contains “biological oxygenated demand (BOD)”, is sent to the biological reactors, where “culture of bacteria aerobic” consume the BOD. The WTP operators must perform the correct algebraic calculations in order for the bacteria to consume the entire BOD.

The Employer has the following departments: milk, cheese, butter, evaporated and powdered milk, warehouse, maintenance (including janitorial), quality control, administrative, and water treatment. All of the departments except quality control, administrative and water treatment have historically been in the bargaining unit. Within the production departments, the Employer employs equipment operators as well as packers. The maintenance employees include mechanics, electricians and boiler room mechanics as well as janitorial employees. The warehouse includes chauffeurs and warehousemen. The quality control department, which has existed since 1957, employs

nine employees as well as one supervisor and one director. The QC employees are paid a salary.

The water treatment plant employs five WTP operators and a supervisor, Isander Silva⁵. Silva had been an employee of the contractor, Environmental Operations. Silva has a Bachelor of Science in Industrial Chemistry and is studying for a Master's Degree in Management and Environmental Risk. The WTP operators are required to possess a water treatment operator license, issued by the Board of Examiners for Operators of Treatment Plants for Drinking Water and Used Water of Puerto Rico⁶, and have “studies in natural sciences” or equivalent experience. Of the five current WTP operators, one, Luthgard Hernandez, has a Bachelor of Science in Industrial Chemistry, and two, Carlos Hernandez⁷ and Richard Haddoc, have associate degrees in science and chemical engineering, respectively. The other two WTP operators, Jose Lopez and Reinaldo Bernazer, had previous experience in water treatment plants at 7-Up Bottling and SmithKline Beecham, respectively.

The production employees are not required to be licensed or have any experience or education. The electricians and refrigeration repair employees are required by law to be licensed and other types of maintenance employees must have two years of experience.

The WTP operators do not perform any work in the production plant nor do they perform any maintenance work at either of the plants. The production plant employees do not perform any work in the water treatment plant. When maintenance work needs

⁵ The parties stipulated that he was a supervisor under Section 2(11) of the Act.

⁶ In order to receive an operator's license, one must pass an exam on biology, chemistry, physics, math and public health.

⁷ Carlos Hernandez is working on his Bachelor of Science degree.

to be performed at the water treatment plant, Silva fills out a work order and takes it to the supervisor of the maintenance department, who decides which maintenance employee should be assigned the work. Thereafter, the maintenance employee performs the work at the water treatment plant and returns to the production plant. The janitorial employees within maintenance regularly perform cleaning in the water treatment plant. The maintenance and janitorial employees also perform tasks in quality control, which is excluded from the bargaining unit.

The benefits and terms of employment are different between the production and maintenance employees and the WTP operators. The WTP operators have the same benefits and terms of employment as the administrative employees. Below is a comparison of the production and maintenance employees and the WTP operators:

<u>Benefit/Term</u>	<u>P & M employees</u>	<u>WTP operators</u>
Vacation	24 days	15 days
Sick leave	18 days	15 days
Pay	hourly	salary
Overtime	yes	no
Medical insurance	yes -- same benefits	yes -- same benefits
Life insurance	no	yes, twice your salary
Dental insurance	yes – employer pays	yes – employee pays
Retirement	4%	9.14%
Christmas bonus	50 hrs. of pay + \$40/yr of work	1 month's salary
Parking	south lot	north lot
Hours	6 a.m. – 3 p.m.	24 hours –10-12 hour shifts

Days	Monday – Friday	7 days/wk
Layoffs	About 2-3 months/year	none

The production and maintenance employees are laid off in about August of each year due to insufficient milk. The WTP operators are not laid off because it is necessary for them to remain at work to feed the cultures and to perform other types of work.

The WTP operators wear the same uniforms as the maintenance employees. The production and administrative employees wear different uniforms. The WTP operators and the production and maintenance employees have separate lunchrooms but WTP operators occasionally have eaten with production employees outside of either of the lunchrooms.

The Petitioner asserts the WTP operators are maintenance employees and thus must be included in the existing bargaining unit. Alternatively, the Petitioner argues the WTP operators are an accretion to the existing bargaining unit.⁸

The record evidence fails to support the Petitioner's assertion that the WTP operators are maintenance employees. The maintenance employees at the production plant perform maintenance and repair work. The electricians and refrigeration repair employees are required to be licensed in their field. The WTP operators do not perform maintenance work at the water treatment plant; rather, they treat the liquid waste in order for it to be properly discharged. Moreover, when maintenance work needs to be performed at the water treatment plant, a maintenance employee from the production

⁸ The Petitioner's citations in a closing argument, **Mallinckrodt Chemical Works**, 162 NLRB No. 48 (1966), **LA-Z-Boy Chair Co.**, 235 NLRB No. 11 (1978), **E. I. DuPont Co.**, 162 NLRB No. 49 (1966), **Dow Chemical Co.**, 202 NLRB No. 6 (1973), and **Firestone Tire and Rubber Co.**, 223 NLRB No. 152 (1976), are inapplicable to the case at bar because each concerns the severing of a craft unit from a production and maintenance unit.

plant is assigned that work, not a WTP operator. Overall, the Petitioner has failed to present sufficient evidence that the WTP operators are maintenance employees.

In determining whether there has been an accretion to the bargaining unit, the Board has followed a restrictive policy. In **United Parcel Service**, 303 NLRB 326, 327 (1991), the Board explained its restrictive policy as follows:

One aspect of this restrictive policy has been to permit accretion only in certain situations where new groups of employees have come into existence after a union's recognition or certification or during the term of a collective bargaining agreement. If the new employees have such common interests with members of an existing bargaining unit that the new employees would, if present earlier, have been included in the unit or covered by the current contract, then the Board will permit accretion in furtherance of the statutory objective of promoting labor relations stability.

In determining whether new employees share a community of interest with employees of an existing bargaining unit, the Board weighs various factors including: skills and functions, interchange of employees, similarity of working conditions, integration of operations, centralization of management and administrative control, geographical proximity, common control of labor relations, and collective bargaining history. **Archer Daniels Midland Co.**, 333 NLRB No. 181, p. 3 (2001); **Progressive Service Die Co.**, 323 NLRB 183 (1997). Employee interchange and common day-to-day supervision are the two most important factors. **Towne Ford Sales**, 270 NLRB 311 (1984).

In **Archer Daniels Midland Co.**, *supra*, the Board found the production and maintenance employees at the soybean refinery were not an accretion to the existing bargaining unit of production and maintenance employees at the soybean processing plant. In so finding, the Board stated there was no interchange of employees; no

common supervision; no contact between the employees in the performance of their job duties; the employees worked at completely different physical areas; the facilities operated independently of each other; and terms and conditions of employment were different. The Board noted their close geographic proximity to each other and similar job skills but found this was insufficient to support a finding of an accretion. Similarly, the Board in **Safeway Stores, Inc.**, 256 NLRB 918 (1981), did not find the delicatessen department employees to be an accretion to the bakery department even though there was geographic proximity between the two departments, interchange of employees between departments, functional integration of the departments and similarity of skills and responsibilities between the two groups of employees.

In the case *sub judice*, the skills and functions of the WTP operators in the water treatment plant are not similar to those of the production and maintenance employees in the production plant. As described above, the WTP operators have a unique job involving the disposal of liquid waste through biological means. The WTP operators must be licensed by the Commonwealth of Puerto Rico's Board of Examiners and have an education in the natural sciences or equivalent experience. Of the five WTP operators, three have college degrees and the other two have extensive experience at water treatment plants. On the other hand, the production employees are not required to be licensed, educated at a certain level or experienced although some of the maintenance employees are required to be licensed.

The two most important factors to support an accretion, employee interchange and common day-to-day supervision, are nonexistent in the case at bar. Specifically, the record evidence established there have not been any permanent or temporary

interchange of WTP operators and production and maintenance employees. Additionally, the production employees and WTP operators do not have any work-related contact and the maintenance employees only have occasional work-related contact. Furthermore, the WTP operators have their own supervisor, who does not supervise any of the production and maintenance employees.

As described above in the chart, the WTP operators and production and maintenance employees do not have similar terms and conditions of employment. Specifically, the two groups of employees have different vacation benefits, sick leave, pay, overtime eligibility, life insurance, dental insurance, retirement, Christmas bonus, parking, hours, days, lunchrooms and layoff practices. The only common term and condition of employment is medical insurance. Also, the WTP operators and maintenance employees wear the same uniforms.

Concerning the integration of the operations, the record evidence reflects that although the law requires the liquid waste to be treated prior to its discharge, the water treatment plant and production plant operate independently of one another. Thus, when the annual layoff of several months occurs at the production plant, the water treatment plant remains in operation.

The record evidence reflects there is common administrative and labor relations control because there is only one administrative and human resources staff for both of the facilities. As previously stated, the Employer did not hire its own water treatment plant workforce until after the current collective bargaining agreement was negotiated. Therefore, there is no collective bargaining history concerning the water treatment plant.

Based upon the record evidence, as reflected above, and the pertinent caselaw, I find the WTP operators at the water treatment plant do not have a sufficient community of interest with the production and maintenance employees at the production plant; thus, they are not an accretion to the existing bargaining unit. Therefore, I am dismissing the Unit Clarification petition.

ORDER

The petition filed in the above-captioned case is dismissed.

Dated this 25th day of May 2001 at Memphis, Tennessee.

/S/ Ronald K. Hooks

Ronald K. Hooks
Regional Director

385-7533-2060